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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

CHESAPEAKE & O. RY. CO. *v.* MAY et al.

June 14, 1917.

[92 S. E. 801.]

1. Damages (§ 217*)—Railroad Fires—Instructions.—In action against railroad for destruction of buildings by fire, an instruction stating the measure of damages as the value of such buildings when destroyed was not erroneous in adding that the cost of replacing them was not by itself the proper measure of damages but should be considered in estimating damages.

[Ed. Note.—For other cases, see Damages, Cent. Dig. §§ 556-559.* 4 Va.-W. Va. Enc. Dig. 191; 15 Va.-W. Va. Enc. Dig. 406.]

2. Damages (§ 217*)—Instruction—Value.—In such action, where plaintiffs' evidence establishing the "proven value" of personal property destroyed was practically unchallenged, and it did not appear that there was any market value for the property at the place of loss, defendant was not prejudiced by the court's substitution, in an instruction upon damages, of the words "the proven value" in place of the words "the market value."

[Ed. Note.—For other cases, see Damages, Cent. Dig. §§ 556-559.* 4 Va.-W. Va. Enc. Dig. 191; 15 Va.-W. Va. Enc. 406.]

3. Damages (§ 174 (3)*)—Railroad Fires—Evidence.—Evidence as to the location of property destroyed with reference to its adaptability for school and other purposes was admissible as bearing on the market value of the property; the building having been equipped with dormitories and used as a boarding school for boys.

[Ed. Note.—For other cases, see Damages, Cent. Dig. §§ 464, 467.* 6 Va.-W. Va. Enc. Dig. 134.]

4. Appeal and Error (§ 1053 (3)*)—Admission of Evidence—Cure by Instructions.—The admission of plaintiffs' testimony of sentimental value of certain articles destroyed was not prejudicial, where the jury were instructed that in estimating damages they could not consider any sentimental value attached to the property by the owners.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4173.* 15 Va.-W. Va. Enc. Dig. 68; 16 Va.-W. Va. Enc. Dig. 97.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

5. Trial (§ 243*)—Conflicting Instructions.—An instruction that, in ascertaining the value of personal property destroyed which had a peculiar value to plaintiffs, the jury must determine the reasonable monetary value thereof, taking into consideration the cost thereof, the possibility of replacing the same, the cost of replacing the same where possible, and plaintiffs' relation to such property, and to fix such proven value as will fairly compensate plaintiffs for the loss thereof, was not in conflict with a prior instruction forbidding the jury, in estimating damages, to consider any sentimental value.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 564, 565.* 7 Va.-W. Va. Enc. Dig. 729.]

6. Witnesses (§ 252*)—Memorandum—Evidence—Admissibility.—Certain plans of the dwelling house destroyed made by a builder from information from the owner were not inadmissible because basing the opinions on the value of the building upon hearsay evidence, where the plans were not relied on as possessing any probative value in themselves, but were merely employed by way of illustration by the opinion witnesses, and the opinions of the expert witnesses were predicated upon the truth of plaintiffs' testimony.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 866, 867.* 14 Va.-W. Va. Enc. Dig. 1098.]

7. Witnesses (§ 255 (2)*)—Use of Memorandum by Witness.—The use by plaintiff, while testifying, of an inventory of the articles destroyed, was proper, although the inventory was prepared in part from information derived from other persons; such inventory not being introduced or relied on as evidence, but used as a memorandum.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. § 875.* 14 Va.-W. Va. Enc. Dig. 1100; 15 Va.-W. Va. Enc. Dig. 1097.]

8. Appeal and Error (§ 1050 (3)*)—Harmless Error—Admission of Evidence.—The plaintiffs having for many years had equitable title to the property burned, the admission of a deed made to plaintiffs after the action was brought was harmless, since the action of the real beneficial owners to recover damages for injury to the property by fire could have been maintained as well without the deed as with it.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4155.* 14 Va.-W. Va. Enc. Dig. 92.]

9. Constitutional Law (§ 38*)—Construction by Court.—The constitutionality of a statute does not depend upon the construction put upon it by a court; but, if the act be constitutional upon its face, it cannot be made unconstitutional by an erroneous interpretation or an improper application of it by the court.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. § 36.* 3 Va.-W. Va. Enc. Dig. 163.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

10. Trial (§ 252 (2)*)—Requested Instructions.—The refusal of instructions not based upon any evidence is not error.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 597.* 7 Va.-W. Va. Enc. Dig. 718.]

11. Damages (§ 217*)—Railroad Fires—Evidence.—In action against railroad for fire loss, it was proper for the jury to consider damages for the destruction of buildings separately from damages to the freehold.

[Ed. Note.—For other cases, see Damages, Cent. Dig. §§ 556-559.* 4 Va.-W. Va. Enc. Dig. 191; 15 Va.-W. Va. Enc. Dig. 406.]

12. Railroads (§ 482 (2)*)—Fires—Evidence—Sufficiency.—In such action, where the evidence justified the jury in finding that the fire was set out by defendant's engine, greater particularity of proof was not required.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1731, 1732.* 6 Va.-W. Va. Enc. Dig. 135.]

Error to Circuit Court, Louisa County.

Action by J. G. May and others against the Chesapeake & Ohio Railway Company. Judgment for plaintiffs, and defendant brings error. Affirmed.

D. H. & Walter Leake and *Henry Taylor*, all of Richmond, for plaintiff in error.

Leake & Buford, of Richmond, *Gordon & Gordon*, of Louisa, *C. V. Meredith*, of Richmond, and *J. G. May*, of Louisa, for defendants in error.

LEWIS *v.* LEWIS.

June 14, 1917.

[92 S. E. 807.]

Divorce (§ 129 (1)*)—Evidence—Sufficiency—Adultery.—In husband's suit for divorce for adultery, plaintiff's evidence held insufficient to warrant relief.

[Ed. Note.—For other cases, see Divorce, Cent. Dig. §§ 411, 413, 418.* 4 Va.-W. Va. Enc. Dig. 745.]

Appeal from Circuit Court of City of Norfolk.

Suit by John D. Lewis against Virginia White Lewis. From decree for defendant, plaintiff appeals. Affirmed.

Thos. W. Shelton, of Norfolk, for appellant.

W. L. Williams, of Norfolk, for appellee.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.